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**NEW APPROACHES TO PUBLIC PROCUREMENT**

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**Responsible Cabinet Member(s) - Councillor David Lyonette,  
Regeneration and Planning Portfolio**

**Responsible Director(s) - John Buxton, Director of Development and Environment**

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**Purpose of Report**

1. To provide Members with an update on the work undertaken to identify the legal and policy frameworks for use by the Council's Planning, Estates, Procurement and Economic Regeneration activities to target employment and training opportunities that arise from Council expenditure and wider regeneration projects.
2. To recommend the adoption of statements and procedures to facilitate the implementation of various Council policies through New Approaches to Public Procurement (NAPP). This approach is being adopted by all Tees Valley Councils in a consistent way, to ensure that both the benefits and the implications for developers are no different across the sub-region.

**Information and Analysis**

3. There are a number of major schemes developing across the Borough from which it is possible to anticipate where opportunities for local employment, training and trading will occur. Major developers frequently bring in their own contractors and recruit staff from across a wide region, which means that the potential economic multiplier effect of major investment is diluted. Local Authorities have powers that can be utilised to encourage local training, employment and procurement, but until now there has not been a tried and tested methodology to facilitate this approach. The New Approaches to Public Procurement (NAPP) is a toolkit developed to help Local Authorities secure more training and employment opportunities for local residents and procurement contracts for local businesses. It is proposed to utilise this toolkit within Darlington.
4. In 2002 a report<sup>1</sup> was published which set out how public bodies could use their procurement, planning powers and land transfer to increase the numbers of training and job opportunities to people that are disadvantaged in the labour market.
5. Following publication the authors established the New Approaches to Public Procurement (NAPP) network comprising 10 English Local Authorities and the DTI Social Enterprise Unit. Over a period of 18 months they developed a toolkit of policy and legal analysis and model documentation relating to public sector procurement, the use of Planning Agreements and the insertion of targeted recruitment and training requirements in development agreements and land transfer documents. It is now proposed that the Council utilises this

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<sup>1</sup> *Achieving Benefits Through Contracts* by Richard McFarlane and Mark Cook (Anthony Collins Solicitors)

toolkit and model clauses within major site developments across the Borough.

6. This work has been replicated across all the Tees Valley authorities including Darlington and has provided opportunities for a range of Council officers and partner agencies to consider how they can use their procurement and other activities to achieve targeted recruitment and training. It has also provided some initial help to Local Authorities in developing pilot projects to test the use of these new approaches and in Darlington has been used to pilot projects within the Central Park and the Pedestrian Heart schemes.

### ***Town and Country Planning and Procurement Frameworks***

7. The Government sets out its aims for sustainable development which includes ‘the maintenance of high and stable levels of economic growth and employment’ and ‘achieving social progress which recognises the needs of everyone’, in two specific documents.<sup>2</sup> These aims have also been included in Darlington’s Community Strategy.
8. Research published by the Joseph Rowntree Foundation in 2000 showed that 13% of Local Authorities had used, or attempted to use, Planning Agreements under S.106 of the Town and Country Planning Act 1990 for employment matters. This was the process adopted by Newcastle City Council at Newcastle Great Park.
9. Targeted recruitment and training can support sustainable development by ensuring that the number of people in the local labour market increases in line with job creating investment. This will limit leakage of staff from existing businesses and reduce car based commuting and the associated environmental damage it causes.
10. Each Planning Authority should make its requirements on local employment clear in its development plans, supplementary guidance and development briefs. This is being addressed in the emerging Local Development Framework (LDF). It has already been referred to in the Council’s first Local Development Scheme (Cabinet Min C267/May/05 refers).
11. Until the LDF is adopted, it is proposed that potential developers of large scale sites be advised of the Council’s requirement that they should make a commitment to targeted recruitment and training through a Planning Agreement or, where the Council is the landowner, through a Development Agreement.
12. The use of public procurement to achieve targeted recruitment and training requirements has been constrained by a lack of guidance on UK and EC procurement policy and by Section 17 of the Local Government Act 1998 that made labour force matters a “non – commercial consideration” in the award of Local Authority contracts.
13. However in recent years there have been some significant changes to the Local Authorities’ legal framework and additional information on policy matters now enables the Council to consider the inclusion of targeted training and employment matters in its procurement of works and services, where it considers this to be appropriate. These changes have been listed in **Appendix 1**.

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<sup>2</sup> *A Better Quality of Life. A Strategy for Sustainable Development in the UK (1999)*  
*Planning Policy Guidance 1: Delivering Sustainable Development (2005)*

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14. It is now possible for Darlington Borough Council to include targeted training and employment matters in its procurement activities, where this is necessary for best value and does not disadvantage non local contractors or lead to direct or indirect discrimination in the recruitment of personnel, and provided that the necessary procedures (e.g. in relation to EC Procurement Directives) are followed. This builds upon the commitments made within:
- (a) the Community Strategy economy theme; “to develop a more enterprising, vibrant and diverse economy that strengthens local businesses, and will attract investment, share prosperity and create better employment opportunities for local people”;
  - (b) the Council’s Procurement Strategy, which contains actions to include targeted recruitment into the working instructions and Code of Practice for large procurement exercises and option appraisals;
  - (c) the Council’s Economic Regeneration Strategy – objective to target disadvantaged groups and communities “linked, where possible to the creation of new jobs through the creation of new jobs through the major projects and investments taking place in Darlington”.

### ***The NAPP Toolkit***

15. The special toolkit (referred to in para 5) has been developed on the New Approaches to Public Procurement to facilitate the roll out of this approach. Following extensive discussion and careful consideration this is being adopted by all the Tees Valley authorities for inclusion within major developments within their areas. A number of training seminars were held in 2004 involving officers from Procurement, Planning, Estates, Legal, Community Services and Economic Regeneration, to demonstrate the validity and justification of the case for adopting this new approach to public procurement within major schemes.
16. The NAPP Toolkit includes model clauses to assist the Authority implement actions to target training and employment for local residents and in particular residents of deprived wards. The toolkit includes guidance with regards the inclusion of local companies within the procurement process. It also provides guidance as to how targeted training and employment actions can be included within development agreements, land transfer contracts, private finance agreements, and public private partnerships.
17. Several examples of the model clauses contained within the Toolkit are given below.
- (a) Targeted recruitment and training charter - this encourages partners, including the developers, contractors and major employers to adopt operating procedures to support targeted recruitment and training.
  - (b) Employers’ requirements for targeted recruitment and training – this requires the contractor to specify a percentage of local labour to be completed by trainees, and could include people who have been unemployed for more than 25 weeks. The Contractor could specify a number of youth trainees to be included within the contract. All vacancies on the site need to be filled in accordance with best equal opportunities practices and the Contractor has to demonstrate within their tender how they will

maximise opportunities for small to medium sized enterprises through the contract.

- (c) Specific targeting – this allows the employer to include targeted recruitment from specific wards, equal opportunities, and social enterprises, and use best endeavours to source from the target area e.g. Darlington or the Tees Valley.
- (d) Clauses for application within Private Finance Initiatives (PFI) or Public Private Partnerships (PPP) – these include guidance on how to meet the aspirations of targeted recruitment and training whilst adhering to EC Procurement Directives.
- (e) Clauses for insertion within a planning agreement - these ensure either finance or co-operation from a developer, their contractors and site occupiers to include targeted recruitment, training and equal opportunities.
- (f) Clauses for inclusion within a Development Agreement - these support recruitment and training and can be extended to include targeted recruitment for maintenance and end-user jobs, for example within a business park or retail development.

18. Currently there are resources available from within several regeneration schemes that would help support the costs of training and serve as an incentive for private sector contractors. The New Approaches to Public Procurement can currently be accommodated within existing work programmes but this would have to be monitored depending upon the number of schemes to which the NAPP approach is applied.

### **Outcome of Consultation**

19. Consultation was held with private sector construction related companies and housing associations at a Construction Training Employment event in December 2003. Ongoing consultation has and is being held with the CITB Sector Skills Council, Federation of Master Builders, Employer Coalition, and the National Federation of Builders. These organisations are supportive of the Local Authorities to introduce the NAPP.

### **Legal Implications**

20. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

### **Section 17 of the Crime and Disorder Act 1998**

21. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

## **Council Policy Framework**

22. The issues contained within this report do not represent change to Council policy or the Council's policy framework, however they do affect the implementation of several policies relating to procurement and planning.

## **Decision Deadline**

23. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

## **Key Decisions**

24. This is a key decision as the implementation of the New Approaches to Public Procurement affects more than two wards.

## **Recommendation**

25. It is recommended that Members agree:-
- (a) That Council-procured major projects maximise the recruitment and training opportunities for Darlington residents, especially those that are disadvantaged in the local labour market;
  - (b) Planning officers be authorised to advise potential developers of large sites for business parks, housing and retail, that the Council will be seeking to discuss the contribution the developer can make, through targeted training and employment, to the achievement of the economic, social and environmental objectives as set out in the Community Strategy, and may incorporate these matters either within a S106 Agreement or through a Development Agreement;
  - (c) The New Approaches to Public Procurement toolkit, as outlined in this report, is used where appropriate.

## **Reasons**

26. The recommendations are supported by the following reasons :-
- (a) it is a priority within the Community Strategy Action Plan to target efforts on those living in the most deprived wards;
  - (b) it supports the Council's economic objectives to strengthen the local economy, share prosperity and reduce economic inequalities;
  - (c) it meets the objectives of the Council Procurement Strategy.

**John Buxton**  
**Director of Development and Environment**

## **Background Papers**

New Approaches to Public Procurement – Targeted Training and Recruitment Toolkit June 2004  
Model Clauses Appendices 1-7

Caroline Taukulis : Extension 2687  
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### Changes to the Local Authorities' Legal Framework

1. The introduction of the “best value” regime in the Local Government Act 1999, providing a broader framework for the selection of service providers;
2. The introduction of the “well-being” powers in the Local Government Act 2000, providing a general power of well-being to promote economic, social, and environmental well-being;
3. The 2001 Local Government Best Value (Exclusion of Non – Commercial Considerations) Order that sets aside S.17 of the 1988 Local Government Act where this is “necessary” for “best value”;
4. A reference to occasions when “... social considerations can legitimately be taken into account” in Government Guidance on Environmental Issues in Purchasing (Section 9 – Office of Government Commerce/DEFRA October 2003);
5. Recognition that “... Councils can work with suppliers to realise ‘community benefits’ ...through their procurement activity” in the OPDM National Procurement Strategy for Local Government October 2003;
6. Publication of an EC Interpretative Communication on the ability to incorporate social considerations into contracts (October 2001);
7. Clear references to the potential to include contract conditions relating to social considerations in the published text of the ECs proposed Single Procurement Directive.